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GENERAL COUNSEL'S OPINION NUMBER 54-9, DATED 9 SEPTEMBER 1954

There is no statutory requirement of medical office approval prior to hospitalization and medical treatment of an employee.

Agency authority to pay the costs of medical treatment continues only while the employee is assigned to a permanent duty station in a foreign country.

TO THE MEDICAL OFFICE

1. Reference is made to your request for comments on paragraphs 3a, b and c of your internal Medical Office Memorandum, which are set forth below. The referenced paragraphs state:

"3 this claim raises the following points which should be settled as a matter of policy . . .

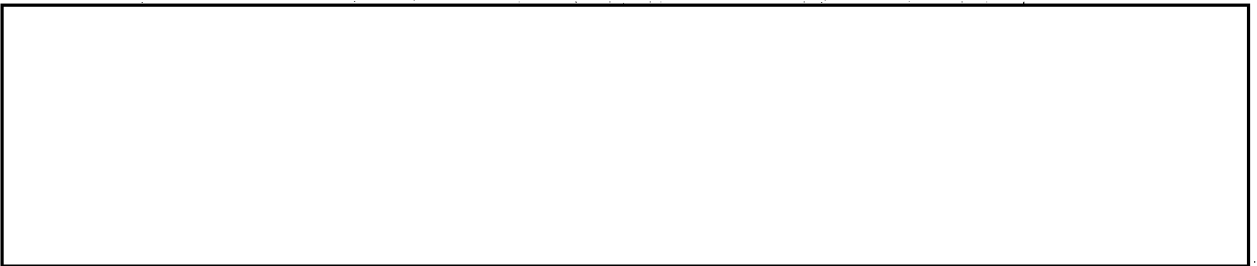


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"b. If the Agency is to be responsible for such expenses, it seems to me that some degree of control over where the individual is to be hospitalized and who is to treat him should be exercised by the Medical Office.

"c. In cases where prolonged medical care will be required, such as terminal carcinoma, tuberculosis, and mental illness, a definite policy should be laid down as to the duration of Agency responsibility."

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Assistant Director, Personnel, under date of 24 April 1953 recommended the establishment of Agency policy "to provide necessary hospitalization in cases of personnel incurring injury or illness while serving overseas, regardless of whether the disability is incurred while engaged in the performance of official duties." In addition, specific approval of the claim of an employee who was hospitalized for the removal of a brain tumor was requested. Approval was granted by the Deputy Director, Administration, on 1 May 1953. Even though the approval of expenses of this type of illness (carcinoma) was contrary to Agency policy prior to 1 May 1953, the requisite authority for payment of such a claim is contained in our basic legislation. It is the opinion of this Office, therefore, that individual cases arising before 1 May 1953 would require specific approval by the Deputy Director, Administration.

3. As to question B, where security and operational considerations are involved, it would appear to be appropriate for the Agency to control hospitalization and even selection of attending physicians, to the maximum extent possible. It would appear further to be a proper responsibility of the Medical Office to keep overseas installations currently informed as to available medical facilities and recommended physicians and surgeons for the given area. However, there is nothing contained in the legislative authority that would require approval of the Medical Office, or notice to the Agency (when not in violation of security or operational requirements) prior to hospitalization and medical treatment. Reimbursement for proper medical and hospital expenses may be made in accordance with Agency legislation, where the first notice of the illness or injury to the Agency is with respect to a fait accompli.

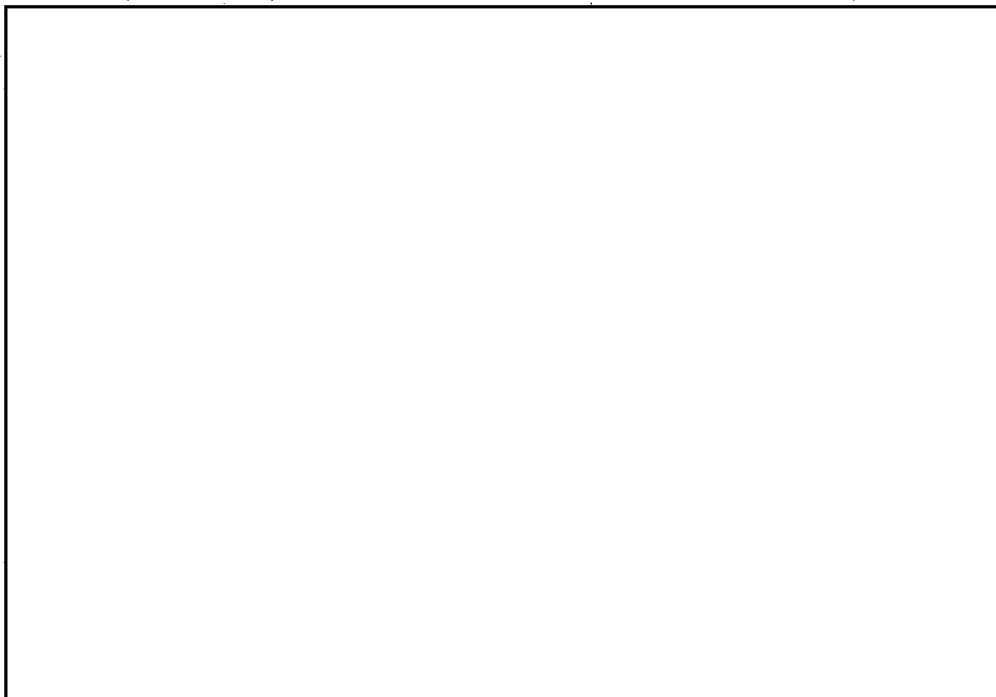
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The provisions cited set forth the legislative criteria under which the Agency may grant the medical benefits provided. For easy reference those criteria may be categorized as follows:

- a. The class of employees for whom the subject benefits may be granted -- officers and full-time employees assigned to permanent-duty stations outside the continental United States, its territories, and possessions;
- b. The illnesses and injuries for which reimbursement may be made -- illness or injury requiring hospitalization, not the result of vicious habits, intemperance, or misconduct on the part of the claimant, incurred in the line of duty while assigned abroad; and
- c. The costs for which payment or reimbursement may be made -- (1) the cost of the treatment at a suitable hospital

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or clinic; and when the illness is incurred in a locality where there does not exist a suitable hospital or clinic, (2) the travel expenses to the nearest locality where a suitable hospital or clinic exists, and, upon recovery, the travel expenses of return to the post of duty.

5. Since the question under discussion, the duration of Agency responsibility to pay the costs of treatment in cases where prolonged medical care will be required, assumes that the criteria which relate to the illness and injuries covered and the reimbursable costs, 4(b) and (c) above, have been met and are not in question as such, our present concern is with the limitation set forth at 4(a), the class of employees eligible to receive the stated medical benefits. The considerations below are addressed to this limitation and its effect upon the termination of medical benefits in cases where prolonged medical care will be required.

6. Before continuing further, it is desirable to note that, in accordance with the statutory authority no change of status (reassignment) of the employee is contemplated or accomplished in the course of a normal illness or injury such as appendicitis or a broken leg. The employee goes to the hospital, remains a few days or a few weeks and then goes back to his job.

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Stated another way, the subject provisions contemplate that the personnel administration of an employee incurring a compensable illness while on proper assignment overseas will be no different in substance from that accorded an employee who becomes ill at anytime, wherever serving, and no question of reimbursement of his medical expenses is involved:

a. Where the prognosis indicates recovery and return to normal duty within the time necessary for recovery from the particular illness or injury, whether it be a simple fracture or multiple fractures requiring long term treatment and convalescence, or whatever, the employee is carried in a leave status and upon recovery returns to his office or post of duty.

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b. Where the prognosis indicates such a disability as will impair the employee's ability to continue in the same employment, change of status is affected at the appropriate time by normal personnel office action of (1) assignment upon recovery to duties compatible with the employee's physical capacity, (2) retirement for disability, or (3) separation from service by reason of physical incapacity or death.

7. In accordance with the considerations set forth in paragraph 6, it is seen that with respect to an illness or injury which reasonably will result in no such disability as will impair the employee's ability to continue in the same employment, Agency responsibility for proper costs continues until such time as the employee properly reports back to duty. The employee's status would remain that of one assigned to the permanent-duty station overseas even though orders transferring him to permanent-duty in the United States may have been issued in the meantime. The intervening orders would not effect a change of status until such time as the employee properly reports for duty at the new station. The general rule as to the effective date of transfer of an employee from one post to another may be stated as follows: When an employee is permanently transferred to a place at which he is already on duty under competent orders, transfer to permanent-duty at that post is effective from the date he receives notice thereof; but if transferred to a place where he is not on temporary duty, his post of duty changes on the date he actually reports for duty at the new post. See 23 Comp. Gen. 342.

8. With respect to the employee who incurs an illness or injury which does result in such a disability as will impair his ability to continue in the same job, if he continues in an assignment at a permanent-duty station overseas, continuing costs for hospital treatment of the illness or injury may be reimbursed. However, if he is transferred to the United States, upon reporting for duty at the place of assignment in the United States, either part-time, or full-time, costs incurred after reporting for duty may not be reimbursed. The same would be true of an employee who, upon reporting for duty in the United States after an assignment overseas, was found to be suffering from an illness or injury that might be clinically established to have been "incurred" overseas.

9. With respect to the findings above relating to termination of

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benefits upon reporting to duty in the United States or onset of an illness that may be clinically traceable to overseas duty, the finding that they are not authorized by our Act does not equate to the current administration of the medical benefits granted the Department of State by the Foreign Service Act. Foreign Service Regulations will allow payment for reoccurrence while on assignment in the United States of an illness incurred overseas and for onset of illness in the United States that may be determined clinically to have been incurred overseas. However, the Foreign Service Act and the Central Intelligence Agency Act are basically different in this respect. The Foreign Service Act applies to Foreign Service Personnel wherever stationed and contains the pertinent single criterion that the illness or injury be incurred in the line of duty while the person is assigned abroad. Our Act requires not only that the illness or injury be incurred in line of duty while the person is assigned abroad, but also, that the personal benefits granted by our Act apply only "with respect to its officers and employees assigned to permanent-duty stations outside the continental United States, its territories, and possessions."

10. It is found, therefore, that Agency authority and responsibility to pay the costs of hospital treatment in proper cases of illness or injury of employees assigned to permanent-duty stations outside the continental United States, its territories, and possessions, continues as long as the employee is assigned to such overseas post. It terminates at such time as (1), he reports for duty at a post within the United States, its territories or possessions; or (2), he is retired for disability; or (3), he is separated from service.

11. It is deemed advisable to make mention of the fact that operational and security considerations oftentimes condition the place of hospitalization. Such considerations, however, do not serve to enlarge the subject personal benefits or amend the determinations set forth above. In such instances the travel to the place of hospitalization may be authorized as operational travel. Any personal benefit that is (or is not) derived from such travel and hospitalization is incidental. The place of hospitalization is required in the interest of operational

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